

HOUSE BILL REPORT

HB 1491

As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

Title: An act relating to creating the insurance fair conduct act.

Brief Description: Creating the insurance fair conduct act.

Sponsors: Representatives Kirby, Campbell, Simpson, Hurst, Appleton, Williams, Wood, Santos, Chase, Ormsby and Morrell.

Brief History:

Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/1/07, 2/27/07 [DPS].

Brief Summary of Substitute Bill

- Prohibits the unfair practice of an insurer unreasonably or negligently denying a claim for coverage or payment of benefits to any first party claimant.
- Requires a court to award actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs if an insurer unreasonably or negligently denied a claim or has violated Title 284 of the Washington Administrative Code.
- Allows a court to award triple the actual damages sustained if an insurer unreasonably or negligently denied a claim or has violated Title 284 of the Washington Administrative Code.

HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, Santos and Simpson.

Minority Report: Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member and Rodne.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jon Hedegard (786-7127).

Background:

The Insurance Commissioner (Commissioner) oversees the insurance business in this state. The Commissioner reviews rates and policy forms. The Commissioner conducts financial examinations and reviews fiscal information to ensure solvency. The Commissioner performs market conduct examinations to ensure compliance with laws regarding claims practices, marketing, sales, rates, forms, and underwriting.

Consumer Protection Act

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal. The CPA gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to hire their own attorneys to bring consumer protection lawsuits. If the consumer wins in court, the law allows the court to award triple the amount of actual damages, up to \$10,000, as well as attorneys' fees.

Unfair Insurance Practices

Chapter 48.30 RCW includes specific practices that the Legislature has determined to be unfair or deceptive practices. The Commissioner has the authority rules to prohibit unfair or deceptive practices. These rules are primarily found in Chapter 284-30 WAC and are generally categorized as either unfair claims settlement practices or unfair trade practices.

Violations of the statutes and rules can be punished by fine by the Commissioner. The Commissioner may also issue a cease and desist order.

Violations of provisions of the unfair practice statutes and rules have been held to be violations of the CPA.

Summary of Substitute Bill:

"First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such policy or contract.

An insurer may not unreasonably or negligently deny a claim for coverage or payment of benefits to any first party claimant.

Any first party claimant who is unreasonably or negligently denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs.

If the insurer has acted unreasonably or negligently in denying a claim for coverage or payment of benefits or has violated Title 284 of the Washington Administrative Code, the superior court must award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant.

If the insurer has acted unreasonably or negligently in denying a claim or has violated Title 284 of the Washington Administrative Code, the superior court may increase the total award of damages to an amount not to exceed three times the actual damages.

These remedies are separate from the remedies prescribed in the Consumer Protection Act.

Substitute Bill Compared to Original Bill:

The definition section in the original bill is removed. A definition of "first party claimant" is added and used throughout the substitute bill. References to the Washington Administrative Code are narrowed to Title 284 WAC.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This is an important addition to consumer protection laws. The current law requires insureds to cooperate with their insurer to resolve claims. There is no similar duty on insurers. The bill does not intend to create a third-party cause of action for bad faith. The courts have acted in the area of bad faith and negligence. Claims have been denied by insurers that have lost the file. The bill is intended to address unreasonable or negligent behavior. The purpose is to create a remedy when someone has been wronged by an insurer. The current system is inadequate. A court should be able to award more damages when it is warranted. If a claim denial is correct, there is no bad faith. My business was insured. A pipe broke and water damaged the floor. The insurer told us they would guarantee the work of a contractor. My business closed for the repairs. A month later, problems related to the repairs began to appear. I contact my insurer and more repairs were authorized. My business was closed for over two weeks. Later, a customer stepped through the floor and fell four feet. There was extensive damage related to the original inadequate repairs. The bid for repairs was for \$450,000. I was concerned this would be a problem. My insurer assured me that there was no problem. It took 10 days of demolition before repair work could start. At that time, my insurer sent me a reservation of rights letter and revoked authorization of repairs. We hired an attorney. The business was closed for well over a year. Eventually, we settled but lost over \$100,000 on the settlement. Where is the accountability for behavior like that by an insurer? It seemed like the insurer didn't care because they didn't have to care. They actually saved money by denying our claim and forcing a lesser settlement.

(In support with concerns) We sympathize with those claimants who have to sue in order to get benefits under their contract. There are three issues. First, the bill allows for a third-party to sue for bad faith. Second, negligence can be used to establish bad faith. A standard of reasonableness should be enough. Finally, a single violation could establish bad faith. While going to court to recover what you are due may be inadequate, the bill goes too far.

(Opposed) I defend people who are sued. My clients are insureds. They don't want to be sued and often believe that they were not at fault. The bill may not be intended to apply to third-party liability but it does. If that is not the intention, it should be amended. There are situations where claims and damages seem excessive and should be contested. This bill sets up a major conflict of interest. It may help some people but it is not good for consumers. It is impossible to read the bill and avoid the idea that this creates third-party liability. It also established punitive damages. An insurer could be correct in their coverage decision and still be liable under the bill. Most of these issues can be addressed by Consumer Protection Act (CPA) remedies today. A person can get attorneys' fees and treble damages. We share the concerns of the Office of the Insurance Commissioner. This bill will increase premiums for policyholders across Washington. Any time a bill creates an additional remedy, courts will look to apply it. This will create a third-party bad faith cause of action. The bill might even allow a provider as a third-party beneficiary to bring a suit. In the great majority of cases, there are no disputes or trials. The bill provides for a third-party bad faith cause of action. We are happy to hear that this is not the intent. Even if that issue is resolved, we oppose the bill. The bill is unclear and likely to increase litigation, and trials. It creates a new negligence standard for bad faith. It will lead to increased costs and increased premiums. The money paid out in claims comes to an insurer in the form of premiums. Everyone's premiums will rise if the additional damages section of the bill becomes law. The increased costs will be passed through to consumers. Regardless of intent, this bill creates a third-party cause of action for bad faith. This is similar to the Royal Globe case in California. That case caused premiums to rise significantly. These remedies do exist under the CPA but the damages are limited under that act. This bill creates higher amounts in addition to the CPA remedies. To address an earlier issue, under case law an insurer in Washington can be liable for bad faith even when they make the correct decision about coverage. Washington's bad faith remedies are not less than other states. In environmental claims, Washington has unique provisions. Attorneys' fees are available in many cases, not only when actions are negligent or unreasonable. There are also CPA remedies. The new aspects of this bills are the third-party cause of action and the punitive damages. No other state awards punitive damages for a negligent act. California courts provided for a similar remedy as this bill. It changed the playing field. It incentivized claims. The bills allows for remedies in addition to the CPA remedies. A single rule violation can lead to treble damages and attorneys' fees. Insureds have every reason to sue. In California, suits soared. Fraud also increased. Eventually, this third-party cause of action option was eliminated in California.

Persons Testifying: (In support) Larry Shannon and Pat LePley, Washington State Trial Lawyers Association; and Tom and Laura Theery.

(In support with concerns) Mary Clogston, Office of the Insurance Commissioner.

(Opposed) Beth Jensen, Washington Defense Trial Lawyers; Gregory Wall; Rod Hollenbeck, Farmers Insurance; Karen Weaver, University of Washington Law School; and Jean Leonard and Ken Cooley, State Farm Insurance.

Persons Signed In To Testify But Not Testifying: None.